

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-02-TC-113
)	
Century Communications Corporation)	CUID No. CO0030 (Colorado Springs)
)	
Petition for Reconsideration)	

ORDER

Adopted: October 30, 2002

Released: October 31, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order, we consider a petition for reconsideration ("Petition") of Cable Services Bureau Order, DA 02-408 ("Prior Order"),² filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").³ In the Prior Order, the Cable Services Bureau found that Operator's refund plan, filed in response to Cable Services Bureau Order, DA 99-300 ("Refund Order"),⁴ did not fulfill the requirements of the Refund Order. The Cable Services Bureau calculated Operator's refund liability for the period from May 15, 1994 through March 31, 1995, plus interest through March 31, 2002. The Prior Order required Operator to refund the total amount of \$819,847.60, plus interest accruing from March 31, 2002 to the date of refund, plus franchise fees, if any, and interest on the franchise fees. In this Order we grant Operator's Petition in part and modify the Prior Order.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the complaint was filed, the Commission is authorized to review the cable programming services tier ("CPST") rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁶ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The filing of a valid complaint triggers an obligation upon

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *See In The Matter of Century Communications Corporation*, DA 02-408, 17 FCC Rcd 3483 (CSB 2002).

³ The term "Operator" includes Operator's successors and predecessors in interest.

⁴ *See In The Matter of Century Colorado Springs Partnership d/b/a Colorado Springs Cablevision*, DA 99-300, 14 FCC Rcd 2787 (1999).

⁵ 47 U.S.C. §543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

the cable operator to file a justification of its CPST rates.⁷ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁸

3. In its Petition, Operator states that it has filed a petition for effective competition with the Commission and based on that filing, the Prior Order should be vacated. However, even if the Commission were to find that Operator is subject to effective competition in the franchise area referenced above in the year 2002, that finding would not affect Operator's refund liability for the period from May 15, 1994 through March 31, 1995, a period when Operator was subject to CPST regulation. Secondly, Operator asserts that the revenue figures submitted with its refund plan have been confirmed. However, it was the methodology that Operator used that was found to be unacceptable in the Prior Order. Operator is unable to provide a breakdown of CPST subscribers who paid the excessive CPST rate and those that may have received a promotional rate. Without that evidence, we cannot determine the subscriber count needed to calculate the overcharges for the period under review. However, we will reduce the subscriber count used in the refund calculation to the maximum number of subscribers that could have received the CPST service at the full rate in light of the total revenue figure provided for the CPST. In addition, our review of the record reveals that Operator was entitled to the refund liability deferral period provided by the Commission's rules.⁹

4. As a result of the refund deferral period and the changes in subscriber counts, we reduce Operator's total refund liability from \$819,847.60 to \$645,644.25 as of March 31, 2002. On May 16, 2002, Operator certified that it refunded \$456,436.50 to subscribers during the month of April 2002. Therefore, Operator's total remaining refund liability equals \$189,207.75 as of March 31, 2002, plus interest accruing from March 31, 2002 to the date of refund, plus franchise fees, if any, and interest on the franchise fees. We modify the Prior Order accordingly.

5. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator is GRANTED IN PART TO THE EXTENT INDICATED HEREIN.

⁷ See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

⁸ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

⁹ The Commission's rules provide for a refund liability deferral period, if timely requested by an operator, beginning May 15, 1994 and ending July 14, 1994, for any overcharges resulting from the operator's calculation of a new maximum permitted rate on its FCC Form 1200. See 47 C.F.R. § 76.922(b)(6)(ii). However, an operator will incur refund liability from May 15, 1994 through July 14, 1994 for any CPST rates charged above the FCC Form 393 maximum permitted rate. Our review of the FCC Form 393 reveals that Operator did not charge in excess of its maximum FCC 393 rate between May 15, 1994 and July 14, 1994. See also *In the Matter of Colorado Springs Cablevision, Inc.*, DA 950757, 10 FCC Rcd 10810 (1995) (finding Operator's CPST rates to be reasonable through May 14, 1994).

6. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that In The Matter of Century Communications Corporation, DA 02-408, 17 FCC Rcd 3483 (CSB 2002) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau